

12. (amended) The process of claim 28, wherein the Ni-Be alloy contains about 1.0 to 2.0 wt.% Be.

23.(amended) A tool for contacting a molten metal at elevated temperature, wherein the tool is made from an underaged Ni-Be alloy containing about 1.0 to less than 3.0 wt.% Be, at least one surface of the tool having a tightly adherent beryllium oxide coating sufficient to substantially prevent aluminum soldering when the surface is contacted with molten aluminum.

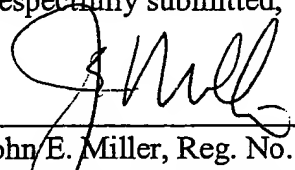
#### REMARKS

Claims 11 and 22 have been cancelled, while claims 28 and 23 made independent, to make clear that the inventive tool is made from an underaged Ni-Be alloy, as pointed out in the previously-filed Request for Reconsideration. A marked-up copy of the amended claims is attached.

Further to the comments in the Request for Reconsideration, Applicants note that the teachings in Harkness relating to underaged alloys are unrelated to the teachings on page 423 relating to tools, because there is no reasonable suggestion that these underaged alloys should be used for making tools, or for any other purpose for that matter. To remedy this defect, the Examiner asserts in his Final Rejection that it would have been obvious to modify Harkness to find the optimum hardness of the alloy. However, there is nothing in Harkness suggesting that an alloy having less than maximum hardness and/or strength would be optimal for making a tool. Therefore, there is nothing in this reference which would motivate one of ordinary skill in the art to reject peak-aged alloys for tools and to carry out an optimization exercise to find a better alloy, as the Examiner proposes. Accordingly, it is clear that this rejection is based on a hindsight reconstruction of the Harkness article, and not an objective assessment of what this reference fairly suggests.

If any fee is due with this amendment, please charge our deposit account No. 03-0172.

Respectfully submitted,



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**EXHIBIT 1**  
**CLAIM AMENDMENTS**

28.(amended) [The process of claim 11, wherein the Ni-Be alloy is] A process for solidification of a molten metal selected from aluminum, aluminum alloy, magnesium, magnesium alloy, copper, copper alloy, zinc and zinc alloy comprising charging the molten metal into a die, the die optionally having a die insert, and allowing the molten metal to solidify therein, wherein the die or die insert or both are made from an underaged Ni-Be alloy containing about 1.0 to less than 3.0 wt.% Be.

12.(amended) The process of claim [11] 28, wherein the Ni-Be alloy contains about 1.0 to 2.0 wt.% Be.

23.(amended) [The tool of claim 22, wherein the Ni-Be alloy is] A tool for contacting a molten metal at elevated temperature, wherein the tool is made from an underaged Ni-Be alloy containing about 1.0 to less than 3.0 wt.% Be, at least one surface of the tool having a tightly adherent beryllium oxide coating sufficient to substantially prevent aluminum soldering when the surface is contacted with molten aluminum.